



**SUPREME COURT OF CALIFORNIA  
ORAL ARGUMENT CALENDAR  
SAN FRANCISCO SESSION  
MAY 27 and 28, 2009**

**FIRST AMENDED**

The following cases are placed upon the calendar of the Supreme Court for hearing at its courtroom in the Earl Warren Building, 350 McAllister Street, Fourth Floor, San Francisco, California, on May 27 and 28, 2009.

**WEDNESDAY, MAY 27, 2009—1:30 P.M.**

- (1) S155129 Delgado v. Interinsurance Exchange of the Automobile Club
- (2) S157980 People v. Moya (Alexander)
- (3) S043628 People v. Carrington (Celeste) [Automatic Appeal]

**THURSDAY, MAY 28, 2009—9:00 A.M.**

- (4) S149752 Roby v. McKesson HBOC et al.  
*(To be called and continued to a future calendar.)*
- (5) S163577 Imperial Merchant Services v. Hunt
- (6) S159282 In re J. R.; People v. J. R.

**1:30 P.M.**

- (7) S154790 21st Century Insurance Co. v. San Diego Co. Superior Court (Sylvia Quintana, Real Party in Interest)
- (8) S064574 People v. Martinez (Michael) [Automatic Appeal]
- (9) S068536 People v. McWhorter (Richard Allen) [Automatic Appeal]

**GEORGE**  
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*Chief Justice*

If exhibits are to be transmitted to this court, counsel must apply to the court for permission. (See Cal. Rules of Court, rule 8.224(c).)

**SUPREME COURT OF CALIFORNIA  
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The following case summaries are issued to inform the public and the press of cases that the Supreme Court has scheduled for oral argument and of their general subject matter. Generally, the descriptions set out below are reproduced from the original news release issued when review in each of these matters was granted and are provided for the convenience of the public and the press. The descriptions do not necessarily reflect the view of the court or define the specific issues that will be addressed by the court.

**WEDNESDAY, MAY 27, 2009—1:30 P.M.**

**(1) *Delgado v. Interinsurance Exchange of the Automobile Club*, S155129**

#07-409 Delgado v. Interinsurance Exchange of the Automobile Club, S155129.

(B191272; 152 Cal.App.4th 671; Superior Court of Los Angeles County; VC045588.)

Petition for review after the Court of Appeal reversed the judgment in a civil action. This case presents the following issue: When a liability policy covers injury arising from an “occurrence,” which is defined as an “accident,” does the insurer have a duty to defend an action for assault if the complaint alleges the insured was acting under an unreasonable and negligent belief that he was acting in self-defense?

**(2) *People v. Moya (Alexander)*, S157980**

#08-13 People v. Moya (Alexander), S157980. (B192331; nonpublished opinion;

Superior Court of Los Angeles County; KA074073.) Petition for review after the Court of Appeal reversed a judgment of conviction of a criminal offense. This case presents the following issue: Did the trial court err to defendant’s prejudice in failing to instruct the jury on voluntary manslaughter on a theory of provocation and heat of passion as a lesser included offense of second degree murder?

**(3) *People v. Carrington (Celeste)*, S043628 [Automatic Appeal]**

This matter is an automatic appeal from a judgment of death.

**THURSDAY, MAY 28, 2009—9:00 A.M.**

(4) ***Roby v. McKesson HBOC et al., S149752*** (*To be called and continued to a future calendar.*)

#07-146 Roby v. McKesson HBOC et al., S149752. (C047617; 146 Cal.App.4th 63; Superior Court of Yolo County; CV01573.) Petition for review after the Court of Appeal reversed in part and modified and affirmed in part the judgment in a civil action. This case presents the following issues: (1) In an action for employment discrimination and harassment by hostile work environment, does *Reno v. Baird* (1998) 18 Cal.4th 640 require that the claim for harassment be established entirely by reference to a supervisor's acts that have no connection with matters of business and personnel management, or may such management-related acts be considered as part of the totality of the circumstances allegedly creating a hostile work environment? (2) May an appellate court determine the maximum constitutionally permissible award of punitive damages when it has reduced the accompanying award of compensatory damages, or should the court remand for a new determination of punitive damages in light of the reduced award of compensatory damages?

(5) ***Imperial Merchant Services v. Hunt, S163577***

#08-113 Imperial Merchant Services v. Hunt, S163577. (9th Cir. No. 07-15976; 528 F.3d 1129; Northern District of California; C05-04993 MJJ, C05-02037 MJJ.) Request under California Rules of Court, rule 8.548, that this court decide questions of California law presented in a matter pending in the United States Court of Appeals for the Ninth Circuit. The question presented is: "May a debt collector recovering on a dishonored check impose both a service charge under Civil Code section 1719 and prejudgment interest under Civil Code section 3287?"

(6) ***In re J. R.; People v. J. R., S159282***

#08-44 In re J. R.; People v. J. R., S159282. (H031292; 156 Cal.App.4th 1404; Superior Court of Monterey County; J38483.) Petition for review after the Court of Appeal reversed an order in a wardship proceeding and remanded for redetermination of

maximum commitment term. This case presents the following issues: (1) When a juvenile ward is committed to the custody of the Division of Juvenile Justice, must the juvenile court orally set the maximum period of physical confinement at the dispositional hearing or does a notation on the signed commitment form suffice? (2) Did the juvenile court fail to consider the facts and circumstances of the particular case in setting the maximum commitment term here?

**1:30 P.M.**

***(7) 21st Century Insurance Co. v. San Diego Superior Court (Sylvia Quintana, Real Party in Interest), S154790***

#07-407 21st Century Insurance Co. v. San Diego Superior Court (Sylvia Quintana Real Party in Interest), S154790. (D049430; nonpublished opinion; Superior Court of San Diego County; GIC857010.) Petition for review after the Court of Appeal granted a peremptory petition for writ of mandate. This case includes the following issue: Should an insured's attorney fees and costs incurred to obtain compensation from a third party tortfeasor be taken into account when applying the rule that an insurer cannot seek reimbursement from the insured unless the insured has been "made whole" by the recovery from the tortfeasor and other sources?

***(8) People v. Martinez (Michael), S064574 [Automatic Appeal]***

This matter is an automatic appeal from a judgment of death.

***(9) People v. McWhorter (Richard Allen), S068536 [Automatic Appeal]***

This matter is an automatic appeal from a judgment of death.